

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

LUIS HERMAN DIAZ
T/N LUIS HERNAN DIAZ

P.M. _____
TIME A.M. _____

-x

JUDGMENT INCLUDING SENTENCE
UNDER THE SENTENCING REFORM ACT

CASE NUMBER: CR-05-120 (ARR)

JAN ROSTAL, ESQ
16 COURT STREET, 3rd FL.
BROOKLYN, NEW YORK 11241

Defendant's Attorney & Address

THE DEFENDANT:

XXX pleaded guilty to count one of the indictment.

— was found guilty on counts

Accordingly, the defendant is ADJUDGED guilty of such count(s), which involve the following offenses:

TITLE & SECTION

21 USC 952(a),
960(a)(1) &
960(b)(3)

NATURE & OFFENSE
IMPORTATION OF HEROIN.

COUNT NUMBER(S)
ONE (1)

The defendant is sentenced as provided in pages 2 through _____ of this Judgment.
The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

— The defendant has been found not guilty on count(s) _____ and is discharged as to such count(s).

XXX Remaining counts are dismissed on the motion of the United States.

XXX It is ordered that the defendant shall pay to the United States a special assessment of \$100.00 which shall be due XXX immediately _____ as follows:

It is further ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of residence or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Defendant's Soc. Sec # NONE

JULY 12, 2005

Date of Imposition of Sentence

Defendant's Date of Birth _____

Defendant's Mailing Address:

JALLYNE R. ROSS, U.S.D.J.

CALLE 30, #213IDA
BARrio BENJAMIN HERRERA
CALI, COLOMBIA

JULY 12, 2005

Date

Defendant's Residence Address:

A TRUE COPY ATTEST

Date: _____
ROBERT C. HEINEMANN
CLERK OF COURT

(SAME AS ABOVE)

By: _____

DEPUTY CLERK

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of twenty one (21) months.

XXX The Court makes the following recommendations to the Bureau of Prisons:
THAT THE DEFENDANT BE HOUSED AT A FACILITY WHERE HIS PSYCHICAL PROBLEMS CAN BE ADDRESSED.

— The defendant is remanded to the custody of the United States Marshal.
The defendant shall surrender to the United States Marshal for this district,

— at _____ a.m./p.m. on _____
as notified by the Marshal.

— The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons

— before 12:00 noon on _____
as notified by the United States Marshal.
as notified by the Probation Office.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____ at _____
_____, with a certified copy of this Judgment.

United States Marshal

By _____

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years.

While on supervised release, the defendant shall not commit another Federal, state, or local crime and shall comply with the standard conditions that have been adopted by this court (set forth on the following page). If this judgment imposes a restitution obligation, it shall be a condition of supervised release that the defendant pay any such restitution that remains unpaid at the commencement of the term of supervised release. The defendant shall comply with the following additional conditions:

- 1) IF EXCLUDED; DEFT SHALL NOT RE-ENTER THE UNITED STATES ILLEGALLY.
- 2) DEFTS SHALL NOT POSSESS ANY FIREARMS.

— The defendant shall pay any fines that remain unpaid at the commencement of the term of supervised release.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on probation or supervised release pursuant to this Judgment:

- 1) The defendant shall not commit another Federal, state or local crime;
- 2) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 3) the defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 4) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 5) the defendant shall support his or her dependents and meet other family responsibilities;
- 6) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 7) the defendant shall notify the probation officer within seventy-two hours of any change in residence or employment;
- 8) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
- 9) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 10) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- 11) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
- 12) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 13) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- 14) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

These conditions are in addition to any other conditions imposed by this Judgment.

FINE WITH SPECIAL ASSESSMENT

The defendant shall pay to the United States the sum of \$ 100.00, consisting of a fine of \$ N/A and a special assessment of \$ 100.00.

— These amounts are the totals of the fines and assessments imposed on individual counts, as follows:

This sum shall be paid immediately
as follows:

XXX The Court has determined that the defendant does not have the ability to pay any fines, cost of confinement or supervision.

— The interest requirement is waived.
— The interest requirement is modified as follows:

1 THE COURT: Well, let me say that although I feel
2 I'm somewhat in the dark on the issue of aberrant behavior, I
3 do think Ms. Rostal is correct that on this particular record,
4 there is nothing before me to demonstrate that the Bureau of
5 Prisons has in fact done anything for him when he is in a very
6 impaired physical condition. There is nothing in this record
7 to suggest anything about the accuracy of Ms. Rostal's
8 statements.

9 I don't know whether or not a particular placement
10 in the future may bring a different kind of medical care but
11 it's clear to me that he has suffered far more than he should
12 have suffered for the time he has already been incarcerated.
13 And I think because of that this is a fact and circumstance
14 relating to Mr. Herman Diaz that's important to take into
15 consideration in fashioning an appropriate sentence in this
16 case.

17 Let me say obviously that his conduct, the crime
18 itself, is a serious one; it merits a serious sentence. But
19 we are also dealing with someone who has literally been
20 falling apart since he arrived and has received very little
21 treatment.

22 And I am in agreement with Ms. Rostal that in light
23 of his age, his background, the likelihood of recidivism,
24 which I consider at this point time to be zero, the fact he
25 will be deported, the serious deterioration of his condition

1 while he has been in prison, that a sentence below the
2 guidelines is more indicated in this case.

3 I can't agree with defense counsel in terms of the
4 length of sentence that was suggested in her letter. But I do
5 believe that the goals of sentencing as enumerated in the
6 statute would be amply satisfied by a sentence of 21 months to
7 be followed by a three-year period of supervised release with
8 the special condition that if deported, the defendant not
9 illegally reenter the United States, prohibit the possession
10 of a firearm.

11 I make a finding that he is unable to pay a fine but
12 I will impose the mandatory \$100 special assessment. And I
13 make a strong recommendation to the Bureau of Prisons that he
14 be designated to an institution that can care for what is
15 really his obvious documented serious physical problems.

16 Are there any open counts?

17 MR. ELLIOT: Yes, I believe Count Two. We move to
18 dismiss.

19 THE COURT: Motion is granted.

20 Mr. Herman Diaz, there are circumstances in which a
21 defendant may appeal the sentence; I'm not sure it's going to
22 apply in your case. But if you chose to appeal, a notice of
23 appeal must be filed within ten days and an attorney will
24 continue to represent you on appeal.

25 MS. ROSTAL: Thank you, your Honor.

1 THE DEFENDANT: Thank you very much.

2 (The matter was concluded.)

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